LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
MAR 19 1976
MICHAEL RODAK, JR., CLERK

(G-37)

IN THE

Supreme Court of the United States

October Term, 1975
No. 75-1351

ABE LAVINE, as Commissioner of the Department of Social Services of the State of New York,
Petitioner,

vs.

SUSAN BARTON, on her own behalf and on behalf of CLINT YOUNG, her minor ward,
Respondents,

and

JOHN FAHEY, as Commissioner of Social Services of the County of Albany,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Petitioner
The Capitol
Albany, New York 12224
Telephone: (518) 474-7178

JEAN M. COON
Assistant Solicitor General

ALAN W. RUBENSTEIN
Principal Attorney
of Counsel

BATAVIA TIMES, APPELLATE COURT PRINTERS
EDWARD W. SHANNON, SENIOR REPRESENTATIVE
HAROLD L. BERKOBEN, REPRESENTATIVE
1701 PARKLINE DR., PITTSBURGH, PA. 15227
412-881-7488

INDEX.

	Page
Opinions Below	2
Jurisdiction	2
Statement in Compliance with Rule 23, Subdivision (1), Paragraph (f)	2
Question Presented	3
Statute of the United States Involved	3
Regulation of the New York State Department of Social Services Involved	4
Statement of the Case	4
Reasons for Granting the Writ	9
I	9
II	12
III	13
Conclusion	15
Appendix A—Decision of New York State Supreme Court, Special Term	A1
Appendix B—Decision of New York Appellate Division, Third Judicial Department	A8
Appendix C—Memorandum of the Court of Appeals of the State of New York	A9
Appendix D—Order of the Court of Appeals of the State of New York	A11
Appendix E—Former Departmental Regulation 18 NYCRR 352.2(e)(1)	A14
Appendix F—Legislative History Pertaining to the Federal Social Security Amendments of 1972	A15

BLEED THROUGH

II.

TABLE OF AUTHORITIES.

Page

Cases:

Bloomer v. McQuewan (14 How. 539 [1852]) 13

Jefferson v. Hackney, 406 U.S. 535 [1972] 10

King v. Smith, 392 U.S. 309 [1968] 9

Knowlton v. Moore (178 U.S. 41 [1899]) 13

Padilla v. Wyman (34 N Y 2d 36 [1974] app. dis. 419 U.S. 1084 [1974]) 7

Rosado v. Wyman, 397 U.S. 397 [1970] 9

Samperi v. Kramer (49 A D 2d 979 [New York Appellate Division, 3d Dept., October 30, 1975]) 14

Wimbush v. Lavine, (unreported [Supreme Court, Albany County, September 23, 1974], appeal pending) 14

Statutes:

Article 78 of the New York Civil Practice Law and Rules 2

18 New York Codes, Rules and Regulations:

Sec. 352.2 4

Sec. 352.2(e)(1) 4,7,8

New York Social Services Law:

§131-a 7

§131-a(2) and (3) 7

§135-a 14

§300 and 320 6

§343 *et seq.* 6

Public Law 92-603:

Sec. 301 (86 Stat. 1465) 5

Sec. 303 5

Sec. 414 (86 Stat. 1492) 2,3,12,13

Sec. 414(a) 4,6,9

Sec. 414(b) 6,8,9,12

Public Law 93-233:

Sec. 19(b) 14

Page

Social Security Act:
Title I 5,6,13
Title IV 8
Title IV-A 3
Title X 5,6,13
Title XIV 5,6,13
Title XVI 3,4,5,6,8,13
Social Security Act (42 U.S.C. §602 [a] [24]), §402 (a)(24) 2,3,4,6,8,9,10,12,13,14
Social Security Act (§1601 *et seq.* [42 U.S.C. §§1381, *et seq.*]) 5
28 U.S.C. §1257(3) 2

Rules:
Rule 23, Subdivision (1), Paragraph (f) 2

Miscellaneous:
H.R. 1 10
H.R. 3153 11
Public Assistance Report No. 50—1973 Edition (SRS)-74-21215 5
Senate Nos. 1842 and 2081 11

In the

Supreme Court of the United States

October Term, 1975

No. .....

ABE LAVINE, as Commissioner of the Department of Social Services of the State of New York,

Petitioner,

vs.

SUSAN BARTON, on her own behalf and on behalf of CLINT YOUNG, her minor ward,

Respondents,

and

JOHN FAHEY, as Commissioner of Social Services of the County of Albany,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

Petitioner Lavine[1] prays that a writ of certiorari be issued to review the order of the Court of Appeals of the State of New York entered in this case on December 22, 1975, insofar as the same affirmed the order of the New York Appellate Division, Third Judicial Department, entered January 10, 1975 granting relief to the named petitioners (respondents Barton and Young here).

---

[1] Abe Lavine has been succeeded as State Commissioner of Social Services by Stephen Berger.

Opinions Below

1. The opinion of the New York State Supreme Court, Special Term, Albany County, dated January 10, 1974 is set forth as Appendix A. It is not reported.

2. The New York Appellate Division, Third Judicial Department, on December 23, 1974 affirmed on the decision at Special Term, Appendix B (46 A D 2d 981; 363 N.Y. Supp. 2d 556).

3. The memorandum of affirmance of the Court of Appeals of the State of New York was handed down December 22, 1975 and is set forth as Appendix C. It has not yet been reported either officially or unofficially.

Jurisdiction

The order of affirmance of the Court of Appeals of the State of New York was dated and entered December 22, 1975 and is set out as Appendix D.

The statutory provision believed to confer jurisdiction on this Court to review the order in question by writ of certiorari is 28 U.S.C. § 1257(3).

Statement in Compliance with Rule 23, Subdivision (1), Paragraph (f)

This cause was commenced in State Court as a special proceeding pursuant to Article 78 of the New York Civil Practice Law and Rules. The Federal question sought to be reviewed was raised in the petition, the initial pleading required by State law. The decisions of the New York Supreme Court at Special Term; the New York Appellate Division, Third Judicial Department; and the Court of Appeals of the State of New York were based solely upon the construction of a Federal statute, to wit, Public Law 92-603 § 414, adding section 402(a)(24) to the Social Security Act.

Question Presented

Should not Public Law 92-603 § 414 adding section 402(a) (24) to the Social Security Act effective January 1, 1973 according to its terms be construed in such a manner as to permit New York to have cooperatively budgeted recipients of Aid to the Aged, Blind and Disabled (AABD)[2] and recipients of Aid to Families with Dependent Children (AFDC)[3] during calendar year 1973 to avoid paying any recipient in excess of the legislatively established State standard of need inasmuch as (1) the intent of Congress was to make section 402(a) (24) applicable, not to recipients of AABD but rather to recipients of Supplemental Security Income for the Aged, Blind and Disabled (SSI)[4] thus demonstrating that the January 1, 1973 effective date contained in the statute was a mistake, and (2) to construe the statute otherwise would result in inequalities and injustice in the administration thereof as between New York and other states?

Statute of the United States Involved

Public Law 92-603 Sec. 414. (86 Stat. 1492)

"RECIPIENTS OF ASSISTANCE FOR THE AGED, BLIND, AND DISABLED INELIGIBLE

"Sec. 414. (a) Section 402(a) of the Social Security Act is amended (1) by striking out the period at the end thereof and inserting in lieu of such period '; and', and (2) by adding at the end thereof the following new clause: '(24) if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount

[2] Pursuant to Title XVI of the Social Security Act as applicable to the 50 states prior to January 1, 1974.

[3] Pursuant to Title IV-A of the Social Security Act.

[4] Pursuant to Title XVI of the Social Security Act as effective January 1, 1974.

POOR COPY

BLEED THROUGH

of the benefits of the family under this title and his income and resources shall not be counted as income and resources of a family under this title."*

"(b) the amendments made by subsection (a) shall be effective on and after January 1, 1973."

Regulation of the New York State Department of Social Services Involved

18 New York Codes, Rules and Regulations, § 352.2(e) (1) (18 NYCRR §352.2[e] [1]) is reproduced as Appendix E. It was repealed April 4, 1974.**

Statement of the Case

A

As of January 1, 1974, New York's program of Aid to the Aged, Blind and Disabled (AABD), pursuant to which New York State and county public assistance expenditures were partially reimbursed by the Federal Government, pursuant to former subchapter XVI of the Social Security Act, ceased to

---

* Section 414(a) appears as section 402(a) (24) of the Social Security Act and reads as follows:

§ *402* "(a) A State plan for aid and services to needy families with children must

* * *

(24) provide that if an individual is receiving benefits under subchapter XVI of this chapter, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this subchapter and his income and resources shall not be counted as income and resources of a family under this subchapter;" (As amended by Public Law 93-647, sec. 101(c) (5) to add the words "provide that".)

** The regulation has been without effect since January 1, 1974 when the State's program of aid to the aged, blind and disabled was terminated and a Federal program of supplemental security income to such persons was initiated. 18 NYCRR § 352.2 was formally amended by filing with the Secretary of State on April 4, 1974, effective that date, to delete the Table for Cooperative Budgeting from the regulation.

exist and a federally-oriented program known as Supplemental Security Income for the Aged, Blind and Disabled (SSI), a new program appearing as subchapter XVI of the Social Security Act, became operative. Under SSI the Federal Government provides benefits to the aged, blind and disabled which are supplemented by New York (through the Federal Government).

Prior to January 1, 1974 and specifically during calendar year 1973, the time span involved in this case, New York granted aid to the aged, blind and disabled pursuant to subchapter XVI of the Social Security Act (§ 1601 *et seq.* [42 U.S.C. §§ 1381, *et seq.*]). Subchapter XVI, as it existed prior to January 1, 1974, however, was merely a combined program to achieve the purpose of subchapters I (Old Age Assistance), X (Aid to the Blind) and XIV (Aid to the Permanently and Totally Disabled) of the Social Security Act and was an alternative offered to the states.

Not all states availed themselves of the subchapter XVI program. Many states provided cash assistance pursuant to separate programs under subchapters I, X and XIV.[5]

The SSI program was inserted in the Social Security Act by Public Law 92-603 § 301, 86 Stat. 1465. Subchapters I, X, XIV and XVI of the Social Security Act were effectively repealed, as to the fifty states, by section 303 of Public Law 92-603, effective January 1, 1974.

---

[5] We are informed by the New York State Department of Social Services that a publication of the United States Department of Health, Education and Welfare entitled "Characteristics of State Public Assistance Plans under the Social Security Act", and denominated Public Assistance Report No. 50 - 1973 Edition (SRS) 74-21215, indicates that during January of 1973 the following states had uncombined plans: Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Idaho, Indiana, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Public Law 92-603, however, contained another provision which has given rise to this litigation. Section 414(a) amended the AFDC provisions of the Social Security Act by inserting a new subdivision 24 in section 402(a) (42 U.S.C. § 602[a] [24]) to generally provide that (1) a recipient of benefits under subchapter XVI shall not be regarded as a member of an AFDC family in determining the amount of its "benefits" and (2) the income and resources of such a recipient shall not be counted as income and resources of the AFDC family.

This litigation arose only because Public Law 92-603 § 414(b) provided that section 414(a) was to be effective "on and after January 1, 1973" rather than January 1, 1974, when the SSI payment provisions became effective.

Despite the fact that an individual, during calendar year 1973 might have received aid from a state as an aged, blind or disabled person under subchapters I, X, XIV or XVI of the Social Security Act, section 402(a) (24) mentioned only subchapter XVI recipients.

B

Respondent Susan Barton, prior to January 1, 1974, received public assistance under the category of Aid to the Disabled (AD) pursuant to New York Social Services Law §§ 300 and 320 as then effective.[6] She also received assistance under the category of Aid to Families with Dependent Children (AFDC) pursuant to New York Social Services Law § 343 *et seq.* on behalf of her minor nephew who resided with her.

There were in existence in 1973 separate payment schedules for New York recipients of AFDC, who received 90% of the State's standard of need, and recipients of AABD who received 100% of need. These were contained in New York

[6] Part of the State's then combined Title XVI program of Aid to the Aged, Blind and Disabled (AABD).

Social Services Law § 131-a as it then read. The payment schedules in section 131-a(2) (3) were geared to the number of persons in a household. But the statute did not make provision for cases in which there were welfare recipients in the same household receiving different categories of assistance.

The Table for Cooperative Budgeting (former Departmental Regulation 18 NYCRR § 352.2[e] [1]) provided a method whereby the State Commissioner could comply with the statute and assure that payments of assistance would not exceed the maximum payments then provided for in Social Services Law § 131-a(2) and (3). Pursuant to the Table for Cooperative Budgeting[7] respondent and her nephew would be considered as a family of two persons and budgeted accordingly. Respondent contended that she and her nephew should have been budgeted as two separate one-person households. If budgeted separately their monthly grant would have been $84 for the respondent and $76 for her nephew for a total of $160. However, respondent and her nephew were budgeted as a two-person household and, under the Table for Cooperative Budgeting were budgeted for $127, effective August 1, 1973.

Respondent requested and received a fair hearing to review the budget calculation. The hearing was held on August 15, 1973 and the State Commissioner's decision was dated October 12, 1973.

The State Commissioner affirmed the determination of the Albany County Department of Social Services that respondent and her ward constituted a household of two people and directed the agency to issue a grant in accordance with its budgeting computation. Thus, respondent and her nephew

[7] See *Padilla* v. *Wyman* (34 N Y 2d 36 [1974]; app. dis. 419 U.S. 1084[1974]), another case involving the Table for Cooperative Budgeting.

were to be budgeted as a two-person household rather than as two separate households of one person each.

Respondent has sought and obtained a declaration that the Table for Cooperative Budgeting (formerly set out in 18 NYCRR § 352.2[e] [1]) has been invalid since January 1, 1973, relying upon the provisions of Public Law 92-603 § 414(b) and claiming that section 402(a) (24) thus precluded the application of the Table for Cooperative Budgeting in her combined subchapters IV and XVI household during calendar year 1973.

The State Commissioner has contended that the January 1, 1973 date set out in section 414(b) was in error and that under the interpretation of the statute by the United States Department of Health, Education and Welfare and under the State Commissioner's interpretation, the correct effective date of the statute should have been January 1, 1974, the date when the state-operated program of Aid to the Aged, Blind and Disabled was supplanted by the new Federal program of Supplemental Security Income for the aged, blind and disabled.*

The Courts below have rejected the State Commissioner's argument. The departmental interpretation was supported by advice to the State Department of Social Services from the Federal Department of Health, Education and Welfare, the administrative agency charged with administering the Social Security Act, that the designated effective date of January 1, 1973 was an error in the statute and that such error would be corrected by appropriate legislation to provide an effective date of January 1, 1974. The error in the statute has, however, not yet been rectified.

---

* And since section 402(a) (24) is applicable only for "purposes of determining the amount of the benefits of the family under this subchapter [IV]", the statute should not, in any event, have prevented the State from utilizing the Table for Cooperative Budgeting for purposes of calculating Susan Barton's benefits as a recipient to Aid to the Disabled under the AABD program.

The New York Supreme Court at Special Term was of the opinion that the "only substantive legal issue" before it was the effective date of section 402(a) (24) of the Social Security Act (42 U.S.C. § 602[a] [24]) as added by section 414(a) of the Social Security amendments of 1972 (Public Law 92-603). The Court rejected the State Commissioner's contention that the effective date of subparagraph 24 should be construed to be January 1, 1974 rather than January 1, 1973 as set out in section 414(b) of the Social Security Amendments of 1972 (Public Law 92-603).

The Court at Special Term held:

> "The named petitioners are entitled to a judgment declaring that the Table for Cooperative Budgeting contained in the Regulations of the Department of Social Services (18 NYCRR 352.2[e] [1]) has been invalid since January 1, 1973 inasmuch as section 402(a) (24) of the Social Security Act (U. S. Code, tit. 42, § 602[a] [24]) as amended by section 414 of the Social Security Amendments of 1972 has been in effect as of January 1, 1973. The respondents are hereby enjoined from reducing these petitioners' public assistance grants other than in conformity with the aforementioned provision of the Social Security Act. * * *"

The New York Appellate Division affirmed on the decision at Special Term.

The New York Court of Appeals affirmed the order of the Appellate Division on December 22, 1975, declining to "sit as a committee on revision."

Reasons for Granting the Writ

I

New York has the right to establish its standard of need (*King* v. *Smith*, 392 U.S. 309 [1968], *Rosado* v. *Wyman*, 397 U.S. 397 [1970]) and there was ample warrant for the State to pay less to recipients of AFDC than to recipients of Aid to

the Aged, Blind and Disabled (AABD). *Jefferson* v. *Hackney* (406 U.S. 535 [1972]).

The result of the holdings below is that the State has been required to pay to a two-person household a sum in *excess* of that fixed by the State Legislature as the standard of need. This is so because such holdings have required that the State treat what is in actuality a single family unit living under the same roof as two separate families.

What section 402(a) (24) of the Social Security Act does, if applied during calendar year 1973, is to effectively undermine New York's right to establish its standard of need for those who sought cash assistance during 1973. In view of this Court's recognition of that right in no uncertain terms, it is submitted that if such were the congressional intent, legislative history would clearly enunciate it. However, we find not a word to indicate such a drastic purpose.

Rather we urge that legislative history clearly shows that the intent of the Congress in enacting section 402(a) (24) was to prevent the double counting of *SSI recipients* residing in AFDC homes, thus avoiding excessive payments, and to protect the income and resources of such an SSI recipient.

We have set out, as Appendix F, such legislative history as we have found relating to the Social Security Amendments of 1972; H.R. 1, enacted as Public Law 92-603. We urge that such legislative history clearly supports our position that section 402(a) (24) was erroneously stated to be effective January 1, 1973, rather than January 1, 1974.

That the January 1, 1973 effective date caused confusion not only in New York but in the Department of Health, Education and Welfare as well is clearly shown by the testimony of then Secretary Weinberger before the Senate Finance Committee on September 25, 1973.

The Senate Finance Committee was holding a public hearing on "Child Support and the Work Bonus" in connection with Senate Nos. 1842 and 2081. Secretary Weinberger appeared as a witness at that hearing and gave the views of the Department of Health, Education and Welfare as regards the child support and the work bonus proposals. At the conclusion of his remarks he stated (Minutes, p. 84):

> "At this point, Mr. Chairman, I would like to submit to the committee for the record a number of technical and other relatively minor amendments to the Social Security Act which we urge the committee to consider in conjunction with H.R. 3153, which we see as a necessary technical bill which should be passed as soon as possible.
>
> "Mr. Chairman, thank you very much for this opportunity to present our views on these important matters."

The proposed AFDC amendments appear at page 91 of the Minutes and included the following:

> "Technical Correction in Effective Date for Determining Title IV Eligibility
>
> [section 3][9] (c) Section 414(b) of the Social Security Amendments of 1972 is amended by striking out '1973' and inserting in lieu thereof '1974'."

As to proposed section 3(c), a "Summary of Proposed Amendment in the Nature of a Substitute to H.R. 3153" submitted by the Secretary stated (*id.*, p. 86):

> "Section 3 (c) of the bill would amend section 414 of the 1972 Amendments to make the amendment contained therein [adding 42 U.S.C. § 602(a) (24)] effective beginning January 1, 1974. Currently, the effective date is January 1, 1973. However, since the amendment refers to

[9] Of H.R. 3153 as proposed by the Secretary. It appears that on June 14th an earlier version of the departmental request to amend H.R. 3153 had been submitted to the Finance Committee of the Senate. Whether the amendment was submitted at that time we are unable to say.

> individuals receiving benefits under title XVI of the Social Security Act, and since the new title XVI will not become effective until January 1, 1974, changing the effective date of section 414 would make clear that the section was not meant to apply to the current title XVI program."

Clearly it would not be amiss to say that the January 1, 1973 effective date set out in section 414(b) of Public Law 92-603 created "confusion worse confounded".

Since Public Law 92-603 §414 was so unclear as to defy Federal administration, the State Commissioner should not be held to a greater standard of perception than that required of the Secretary. Yet the Courts below have, after the fact, held the State Commissioner to that greater standard for the judgment at Special Term was dated March 5, 1974.[10]

The Congress has not acted to correct the effective date of Public Law 92-603 § 414. Why it has not acted we cannot say. That this Court has the power to construe Federal statutes according to their true intent is clear and does not require the citation of authority. We urge that when Pulbic Law 92-603 §414 is construed within the context of that enactment as a whole, the conclusion is inescapable that there was no reason for making section 402(a) (24) effective prior to January 1, 1974, the date upon which the SSI provisions became effective and that the January 1, 1973 effective date was erroneous. We urge that this Court grant certiorari and by its process decline to perpetuate the inequities which flow from applying the statute from January 1, 1973.

II

The Social Security Act is remedial in nature. As a remedial statute, we urge that its provisions should uniformly affect each of the fifty states. Section 402(a)(24) of the Social

[10] The State proceeding had been commenced on October 30, 1973.

Security Act, however, if applied during 1973, does not affect each of the states in a uniform manner.

There is no rational basis for applying the provisions of section 402(a)(24) to states which granted cash assistance to the aged, blind and disabled under the combined program afforded by former subchapter XVI of the Social Security Act and not applying those provisions to states which granted cash assistance under former subchapters I (Old Age Assistance), X (Aid to the Blind) and XIV (Aid to the Permanently and Totally Disabled) of that Act to persons identically situated.

Had New York not opted to operate under former subchapter XVI, section 402(a)(24) would not apply to New York according to its terms and this proceeding would not now be before the Court. To apply the statute to New York prior to January 1, 1974 is inequitable and wrong. Such a discriminatory intent should not be attributed to the Congress. A literal reading of Public Law 92-603 § 414 can only produce inequality and injustice. Such a reading can, under this Court's holdings, be avoided if another and more reasonable interpretation is present in the statute. *Bloomer* v. *McQuewan* (14 How. 539, 553 [1852]), *Knowlton* v. *Moore* (178 U.S. 41, 77 [1899]).

The only reasonable interpretation of the statute is that it was intended to apply to the SSI program which became effective January 1, 1974 and that the January 1, 1973 effective date was a mistake. We urge the Court to so construe the statute.

III

The New York Courts have denied class action status as sought by respondents (petitioners in the State Court proceeding below). On the class issue we had advised the Court that the New York State Department of Social Services had estimated that an award of retroactive welfare payments

POOR COPY

BLEED THROUGH

would involve $9,700,000 in additional State and County expenditures and that, by reason of the provisions of Public Law 93-233 § 19(b), Federal financial participation was questionable.

There are at least three cases now in State Court in which relief is sought on the same grounds as in the case at bar. We assume furthermore that other recipients of assistance will seek administrative fair hearings in an attempt to obtain the benefit of the judgment below. While a *nisi prius* State Court has held the 60-day time bar set out in New York Social Services Law § 135-a[11] to be operative (*Wimbush* v. *Lavine*, unreported [Supreme Court, Albany County, September 23, 1974], appeal pending), the issue has not yet reached New York's highest court. See also *Samperi* v. *Kramer* (49 A D 2d 979 [New York Appellate Division, 3d Dept., October 30, 1975]).

Especially in these days of fiscal constraint, limited state funds allocated to payment of public assistance should be protected. New York and its counties should not be required to pay out for past assistance under a statute of such doubtful applicability as section 402(a) (24) of the Social Security Act.

---

[11] Section 135-a provides that:

"Whenever pursuant to the provisions of this chapter an applicant for or recipient of public assistance and care, or services, may request a fair hearing from the department, such request must be made within sixty days after the date of the action or failure to act complained of."

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be granted.

Dated: March 17, 1976

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Petitioners

JEAN M. COON
Assistant Solicitor General

ALAN W. RUBENSTEIN
Principal Attorney

of Counsel

Appendix A—Decision of New York State Supreme Court, Special Term.

STATE OF NEW YORK

SUPREME COURT—County of Albany

———o———

SUSAN BARTON, *et al.*,

Petitioners,

against

ABE LAVINE, as Commissioner of the Department of Social Services of the State of New York, *et al.*,

Respondents.

———o———

(At a Special Term of the Supreme Court held in the County of Albany on November 26, 1973—Calendar No. 24)

(JUSTICE HAROLD J. HUGHES, Presiding)

Appearances:

Legal Aid Society of Albany, Inc., Attorney for Petitioners, (Lanny Earl Walter, Esq. of Counsel), 79 North Pearl Street, Albany, New York 12207.

Greater Up-State Law Project, Monroe County Legal Assistance Corporation, Additional Attorney for Petitioners, (Rene H. Reixach, Esq. of Counsel), 139 Troup Street, Rochester, New York 14608.

Hon. Louis J. Lefkowitz, Attorney General of the State of New York, Attorney for Respondent Abe Lavine, (Lawrence

BLEED THROUGH

POOR COPY

L. Doolittle, Esq. of Counsel), The Capitol, Albany, New York 12224.

Hon. Condon A. Lyons, County Attorney, County of Albany, Attorney for Respondent John Fahey, Commissioner of the Department of Social Services in the County of Albany, (Robert E. Harris, Esq. of Counsel), Albany County Court House, Albany, New York 12207.

HUGHES, J.:

This is a proceeding pursuant to article 78 of the Civil Practice Law and Rules to review a fair hearing determination of the Commissioner of the New York State Department of Social Services dated October 12, 1973.

Petitioner Susan Barton is a resident of the City of Albany and is a recipient of Aid to the Disabled (AD) from the Department of Social Services of Albany County. Petitioner is the aunt of co-petitioner Clint Young and has legal custody of this minor. She has received on his behalf Aid to Families with Dependent Children (AFDC) from the Albany County Department of Social Services in the sum of $117.25 per month since August 1, 1973 when the minor returned to her home after a stay in the Schenectady Children's Home.

The AD program, pursuant to which petitioner Barton receives assistance, is financed under Title XVI of the Social Security Act as amended (U.S. Code, tit. 42, §1381 *et seq.*). The AFDC program, pursuant to which petitioner Young receives assistance, is financed under Title IV under the Social Security Act as amended (U.S. Code, tit. 42, §601 *et seq.*).

Section 402 (a) (24) of the Social Security Act (U.S. Code, tit. 42, §602 [a] [24]) as amended by section 414 (a) of the Social Security Amendments of 1972 (P.L. 92-603) provides:

> ...if any individual is receiving benefits under Title XVI, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this title and his income and resources shall not be counted as income and resources of a family under this title...

Section 414 (a) of the Social Security Amendments of 1972 (P.L. 92-603) is subject to the provisions of section 414 (b) of the Social Security Amendments of 1972 (P.L. 92-603) which provide:

> The amendments made by subsection (a) shall be effective on and after January 1, 1973.

It is petitioners' contention that, pursuant to the foregoing amendments, the amount of petitioners' grant should have been calculated (since August 1, 1973) without regarding petitioner Barton as a member of the family unit for purposes of determining the amount of the family's benefits. Petitioners' grant from the Albany County Department of Social Services has been calculated since August 1, 1973 pursuant to the Table for Cooperative Budgeting, as set forth in the Regulations of the Department of Social Services of the State of New York (18 NYCRR 352.2 [e] [1]), according to which each family is regarded as a single unit for purposes of determining the amount of benefits for the household, irrespective of the fact that members of the family qualify under two different categories of assistance. As the Table for Cooperative Budgeting is applied in the case of the named petitioners, a family of two persons, one of whom receives AD benefits and the other of whom receives AFDC benefits, receives a total grant consisting of one half of a two-person AFDC grant and one half of a two-person AD grant. As ap-

BLEED THROUGH

POOR COPY

plied to petitioners, the Table of Cooperative Budgeting allows them a total family monthly grant of $127, excluding rent, heat and a special monthly AD allowance. If petitioners' needs were calculated without regarding petitioner Barton as a member of the family unit for purposes of determining the amounts of the family's benefits, they would be entitled to a total family grant of $160 a month, excluding rent, heat and the special AD allowance.

At the fair hearing, petitioners' attorney challenged the legality of budgeting petitioners on a cooperative basis rather than in conformity with requirements of subsection 24 of section 402 (a) of the Social Security Act. In his decision dated October 12, 1973, Commissioner Lavine affirmed the use of cooperative budgeting as applied to the Albany County Department of Social Services.

In this proceeding, petitioners, on behalf of themselves and, pursuant to CPLR 1005, on behalf of other persons similarly situated, seek a judgment (1) declaring that the Table of Cooperative Budgeting contained in the Official Compilation of Codes, Rules and Regulations of the State of New York (18 NYCRR 352.2 [e] [1]) is invalid and has been invalid since January 1, 1973; (2) annulling the fair hearing decision of October 12, 1973; (3) restraining respondents from reducing the main petitioners' public assistance grant and further ordering said respondents to comply with the Social Security Act (U.S. Code, tit. 42, §602 [a] [24]) as amended by section 414 of the Social Security Amendments of 1972; and (4) further ordering respondents to identify all those recipients of public assistance who are members of the alleged class and to calculate the amount of assistance they would have received had their family budgets been determined in accordance with the aforementioned sections of the

Social Security Act and to issue to the members of said class monies allegedly wrongfully withheld from them since January 1, 1973.

The only substantive legal issue before the court is the effective date of section 402 (a) (24) of the Social Security Act as amended by section 414 (a) of the Social Security Amendments of 1972. It is respondents' contention that, notwithstanding the clear language of the statute that the amendment was effective on and after January 1, 1973, the amended language is not applicable until January 1, 1974. In support of this contention, respondents delve at some length into the legislative history of the amendment and the alleged purpose thereof in order to present to the court the purported legislative intent in passing the amendment. It is clear, however, that the courts have no power to interpret a statute which is plain on its face. Legislative intent as an aid to the construction of statutes becomes relevant only if there is some ambiguity which demands interpretation (see McKinney's Cons. Laws of N.Y., Statutes, §76; *Matter of Foscarinis [Corsi]*, 28 App. Div. 746, 777). This is not the case here. The court concludes that the respondents' argument that there were two titles XVI and that the amendment in question does not apply until January 1, 1974 is without merit.

With regard to the procedural issues raised by respondents, the court rejects the contention that the petitioner Susan Barton does not have standing to bring this proceeding as well as the contention that the court is without jurisdiction to determine the validity of section 352.2 of the Regulations of the Department of Social Services (18 NYCRR 352.2) (*cf. Matter of Schlemowitz v. Lavine*, 75 Misc 2d 529). The court agrees, however, that the present proceeding may not be maintained as a class action.

It does not appear that any members of the alleged class have exhausted their available administrative remedies. Without having requested fair hearings to review the fact that their benefits were calculated under the cooperative budgeting table, the alleged members of the class would be in no position to contest the utilization of that table in an article 78 proceeding. There is then no class so far as the court is aware for the petitioners to represent and, thus, the class action is inappropriate (see *Gaynor v. Rockefeller,* 15 N Y 2d 120, 129; *Matter of Sanford* v. *Rockefeller,* 70 Misc 2d 833, 839, mod. on other grounds 40 A D 2d 82, affd. 32 N Y 2d 788).

By letter dated January 8, 1974, the Attorney General points out that under the respondents' view the amendments became effective January 1, 1974. The letter also points out that the individual petitioners have at all times received their benefits without reference to the Table for Cooperative Budgeting as the result of a stay order signed by Mr. Justice Edward S. Conway on October 30, 1973. Respondents conclude that this proceeding is now moot because, even if successful, petitioners would not receive any further benefits as the result of a decision in their favor. The Court does not agree. While the Department of Social Services may already have paid the full benefits to the petitioners, there has been no adjudication that these payments were proper. Under the circumstances, there should be a determination as to the propriety of these payments.

The named petitioners are entitled to a judgment declaring that the Table for Cooperative Budgeting contained in the Regulations of the Department of Social Services (18 NYCRR 352.2 [e] [1]) has been invalid since January 1, 1973 inasmuch as section 402 (a) (24) of the Social Security Act (U.S. Code,

tit. 42, §602 [a] [24]) as amended by section 414 of the Social Security Amendments of 1972 has been in effect as of January 1, 1973. The respondents are hereby enjoined from reducing these petitioners' public assistance grants other than in conformity with the aforementioned provision of the Social Security Act. Insofar as the petition seeks relief as a class action, it is dismissed.

Dated: January 10, 1974.

Appendix B—Decision of New York Appellate Division, Third Judicial Department.

SUPREME COURT—Appellate Division
Third Judicial Department

December 23, 1974 23393

—o—

In the Matter
of
SUSAN BARTON *et al.*,
Appellants-Respondents,

v.

ABE LAVINE, as Commissioner of the Department of Social Services of the State of New York, *et al.*,
Respondents-Appellants.

—o—

Judgment, Supreme Court, Albany County, entered on March 5, 1974, affirmed, without costs, on the decision of Hughes, J., at Special Term.

HERLIHY, P.J., GREENBLOTT, COOKE, KANE and REYNOLDS, JJ., concur.

Appendix C—Memorandum of the Court of Appeals of the State of New York.

STATE OF NEW YORK
COURT OF APPEALS

———o———

3 No. 527

SUSAN BARTON, on Behalf of Herself and Clint Young, &c.,
Appellant-Respondent,

vs.

ABE LAVINE, as Commissioner of the Department of Social Services of the State of New York,
Respondent-Appellant,

and JOHN FAHEY, &c.,
Respondent.

———o———

This memorandum is uncorrected and subject to revision before publication in the New York Reports.

(527)

Lanny Earl Walter, Legal Aid Society of Albany (Wade Eaton of counsel) for appellant.

Louis J. Lefkowitz, Attorney General (Alan W. Rubenstein of counsel) for respondent State.

Robert P. Roche, County Attorney, Albany (Philip R. Murray of counsel) for respondent County.

Appendix C—Memorandum of the Court of Appeals of the State of New York.

MEMORANDUM:

The amendment to the Social Security Act in issue here (P.L. 92-603), is plainly effective as of January 1, 1973. It would have been appropriate to resort to legislative history for clarification were the effective date ambiguous upon the face of the statute. "January 1, 1973" could scarcely be more unambiguous. We decline the invitation to sit as a committee on revision. (cf. *Taylor* v. *Sise*, 33 NY 2d 357, 363; *Roosevelt Raceway* v. *Monaghan*, 9 NY 2d 293, 304; *Meltzer* v. *Koenigsberg*, 302 NY 523, 525).

If we conclude that "1973" means precisely what it says, in the amendment, then appellant clearly was denied benefits to which she was entitled from August of 1973, when she and her nephew were made subject to the Table for Cooperative Budgeting (18 NYCRR 352.2 [e] [1]), until such time as the Table ceased to be applied to her by virtue of the reorganization of aid programs by the federal and state governments. The fact that appellant has already received the benefits she sues for does not render her case moot; she obtained these benefits under the terms of a stay pending this litigation and, as Special Term noted below, she has a right to a determination that she is entitled to keep those payments. The legal issue she raises is unchanged.

We do not find a class action appropriate in these circumstances.

Accordingly, the order of the Appellate Division should be affirmed.

* * *

Order affirmed, without costs, in a memorandum. All concur. Cooke, J., taking no part.

Decided December 22, 1975.

Appendix D—Order of the Court of Appeals of the State of New York.

COURT OF APPEALS.

State of New York, ss.:

"Entered December 22, 1975"

PLEAS in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 19th day of November in the year of our Lord one thousand nine hundred and seventy-five, before the Judges of said Court.

Witness,

The HON. CHARLES D. BREITEL,
Chief Judge, *Presiding.*

JOSEPH W. BELLACOSA,
Clerk.

Remittur: December 22, 1975.

———o———

3 No. .....

SUSAN BARTON, on Behalf of Herself and Clint Young, &c.,
Appellant-Respondent,

vs.

ABE LAVINE, as Commissioner of the Department of Social Services of the State of New York,
Respondent-Appellant,

and JOHN FAHEY, &c.,
Respondent.

———o———

BE IT REMEMBERED, That on the 15th day of April in the year of our Lord one thousand nine hundred and seventy-

BLEED THROUGH

POOR COPY

five, Susan Barton, on Behalf of Herself and Clint Young, &c., the appellant-Respondent in this cause, came here unto the Court of Appeals, by Rene H. Reixach and Lanny Earl Walter, her attorneys, and filed in the said Court a return thereto from the order of the Appellate Division of the Supreme Court in and for the Third Judicial Department. And Abe Lavine, as Commissioner of the Department of Social Services of the State of New York, the respondent-appellant, and John Fahey, &c., the respondent in said cause, afterwards appeared in said Court of Appeals by Louis J. Lefkowitz, Attorney General, and Robert P. Roche, their attorneys.

Which said return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Wade Eaton for appellant (Sue Barton), Mr. Alan W. Rubenstein of counsel for the respondent-appellant Lavine, and by SUBMITTED of counsel for the respondent Fahey, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs, in a memorandum.

All concur.

Cooke, J., taking no part.

And it was also further ordered, that the records aforesaid, and the proceedings in this Court, be remitted to the Supreme Court of the State of New York, there to be proceeded upon according to law.

Therefore, it is considered that the said order is affirmed &c., AS AFORESAID.

And hereupon, as well the return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, &c.

JOSEPH W. BELLACOSA,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE
Albany, December 22, 1975

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

JOSEPH W. BELLACOSA,
(Seal) *Clerk.*

BLEED THROUGH

POOR COPY

Appendix E—Former Departmental Regulation 18 NYCRR 352.2(e)(1).

352.2 Allowances and grants for persons who constitute or are members of a family household.

* * *

(e) When the income of an applicant or recipient is in excess of schedule SA-3 but less than SA-1, he shall continue to be eligible for the other items of need and the cost of services specified in department regulation section 352.1. Such excess income shall be applied toward the payment for other items of need, except those provided under the purchase of service provisions, medical assistance and food stamp programs.

(1) The amount of the basic allowance shall be determined in accordance with the following table:

TABLE FOR COOPERATIVE BUDGETING

Allowances for Basic Needs

Number of Persons in Assistance Group	*Cost Standard SA-1*	*One AABD Person in Group*		*Two AABD Persons in Group*	
		AABD	*ADC/HR*	*AABD*	*ADC/HR*
1	$ 84	—	—	—	—
2	134	$67	$ 60	—	—
3	179	60	107	$119	$ 54
4	231	58	156	116	104
5	284	57	204	114	153
6	329	55	247	110	197
7	374	53	289	107	240
8	419	52	330	105	283
9	464	52	371	103	325
10	509	51	412	102	366

For all other families of different size or composition the following formula applies:

$\frac{n[X]}{N}$ rounded to nearest $ = amount to be allowed for AABD portion of the grant

$.90[(N-n)\frac{(X)}{N}]$ rounded to nearest $ = amount to be allowed for the ADC, HR portion of the grant.

n = Number of AABD persons in assistance group
X = The cost standard
N = The number of persons in assistance group

Appendix F—Legislative History Pertaining to the Federal Social Security Amendments of 1972.

It was proposed during the period 1969-1971 to replace existing programs of grants to the States to aid the needy with a Federal program based upon a guaranteed annual income.

What emerged in the Congress was H.R. 1, the Social Security Amendments of 1972.

The House Ways and Means Committee reported the bill out on May 26, 1971 (House Report No. 92-231, 1972 U.S. Code Congressional and Administrative News, p. 4989, *et seq.*) and the bill passed in the House on June 22, 1971. It was not until September 26, *1972* that the Senate Finance Committee reported the bill out (Senate Report No. 92-1230). The bill then went to Conference and was finally approved by both Houses on October 17, 1972 as the Congress was driving toward adjournment.

H.R. 1 as passed by the House would have replaced the categories granting assistance to states for aid to needy per-

POOR COPY

sons (Old Age Assistance [Title I], Aid to the Blind [Title X], Aid to the Permanently and Totally Disabled [Title XIV], Aid to the Aged, Blind and Disabled [Title XVI] and Aid to Families with Dependent Children [Title IV]) with two basic programs both oriented toward Federal administration rather than State administration. These were the "Family Assistance Program" (Proposed Title XXI) and "Assistance for the Aged, Blind and Disabled" (proposed Title XX).

It would, of course, be wrong for a person to receive assistance under both Title XX and Title XXI. Thus H.R. 1, as passed by the House, provided, as to proposed Title XXI (the family assistance plan) that (H.R. 1, proposed § 2155(f)):

> "Recipients of Assistance for the Aged, Blind, and Disabled Ineligible
>
> "(f) If an individual is receiving benefits *under title XX*, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this title and his income and resources shall not be counted as income and resources of a family under this title."
>
> "Congressional Record—House, Vol. 117, June 22, 1971, p. 21450." (Emphasis supplied.)

The purpose of this provision was described in the House Committee Report in its discussion of the proposed new Title XXI as follows:

> "(5) Recipients of assistance to the aged, blind, and disabled ineligible: Your committee's bill continues the usual rule against payment of benefits under more than one public assistance plan by excluding from benefits un-

der the family programs any individual who elects to receive aid *under title XX,* Assistance for the Aged, Blind, and Disabled. Under your committee's bill, such an individual and his income and resources would not be counted.

"U.S. Code Congressional and Administrative News, 92nd Congress Second Session, 1972, p. 5171. (See also page 5341.)" (Emphasis supplied.)

and was described in the Committee's summary report to the House with the statement that:

"If an individual takes benefits under adult assistance [Title XX] he could not be eligible for family benefits [Title XXI]." (Brackets supplied.) Congressional Record, Vol. 117, June 21, 1971, p. 21105.

On the Senate side, the Committee on Finance rejected the proposed family assistance plan (Title XXI) choosing to retain but entirely revamp the Aid to Families with Dependent Children Program (Title IV) premised upon grants to the states (see Senate Report 92-1230, pp. 788 *et seq.*) The Committee on Finance rather than proposing a program of assistance for the aged, blind and disabled (the proposed Title XX of H.R. 1) deleted the proposed Title XX and inserted a new Title XVI entitled "Supplemental Security income for the Aged, Blind and Disabled" (Senate Report 92-1230, pp. 943 *et seq.*). The Committee on Finance of the Senate also met the double payment problem. Its report stated (p. 468):

"Individuals Receiving Another Form of Federally Matched Welfare or Benefits From the Supplemental Security Income Program

POOR COPY

"The committee bill, like present law and the House-passed version of H.R. 1, would make ineligible for welfare under the family welfare program an individual who receives aid to the aged, blind, and disabled or benefits from the Supplemental Security Income program."

To accomplish its stated purpose the Senate would have amended the ADC provisions as proposed by the Senate Finance Committee. Proposed section 411(f)(7) of the Social Security Act relating to ADC would have excluded from the term "eligible person", any child, relative or individual who for any month "is, prior to January 1, 1974, receiving aid under title XVI, or after December 31, 1973 is receiving supplemental security income benefits under such title;" (Senate Report, p. 828).

Thus, the House of Representatives and the Senate recognized the double payment problem, *i.e.*, one person receiving assistance under two different categories of assistance, but handled it in different ways.

Indeed, Title XVI of the Social Security Act as it existed prior to January 1, 1974, at which time the program provided for grants to the states to provide Aid to the Aged, Blind and Disabled (AABD), had provided (42 U.S.C. § 1382(a)(11)) that a State plan must:

"(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under subchapter I of this chapter or aid under the State plan approved under part A of subchapter IV of this chapter or under subchapter X or XIV of this chapter;"

Appendix F—Legislative History Pertaining to the Federal Social Security Amendments of 1972.

When the report of the Committee on Finance of the Senate was taken up on the floor of the Senate, those portions of the Committee's recommendations relating to recasting of the Aid to Families with Dependent Children program, which were dubbed a "workfare" plan, ran into difficulty.

Three plans were put forth in the Senate. These were:

1. The "workfare plan" written into the Senate version of H.R. 1 by the Finance Committee;

2. The administration's family assistance program contained in the House-passed version of H.R. 1, and

3. A third plan worked out by Senator Ribicoff and officials of the Department of Health, Education and Welfare.

By a 46-41 roll-call vote the Senate approved a plan to "test" the three-rival welfare reform proposals "and thus killed enactment of specific welfare reform bill" (See 1972 Congressional Quarterly Almanac, p. 909).

Thus it was that as H.R. 1 came up for final action in the Senate, it contained no provision proscribing double payment of benefits. It was against this background that, on October 5, 1972, Senator Cranston introduced an amendment to section 402(a) of the Social Security Act to read as follows:

"Recipients of Assistance for the Aged, Blind, and Disabled Ineligible.

"Sec. 513. (a) Section 402(a) of the Social Security Act is amended (1) by striking out the period at the end thereof and inserting in lieu of such period '; and ', and (2) by adding at the end thereof the following new paragraph:

" '(24) If an individual is receiving benefits under title XVI, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this title and his income and resources shall not be counted as income and resources of a family under this title.'

"(b) The amendments made by subsection (a) shall be effective on and after January 1, 1973."

Because the debate on the amendment was very short, we here set it out in full:

"Mr. Cranston. Mr. President, this amendment is designated to prohibit so-called double counting of recipients of aid to the aged, blind, and disabled living in AFDC households.

The amendment prohibits counting of an aged, blind, and disabled recipient, or his or her resources, who live with other recipients of AFDC assistance, in determining the amount of the AFDC assistance payment to such a family. This affects one of every 11 AFDC households, and has been included in almost every welfare reform proposal introduced in Congress.

My amendment would include this provision in title III of the bill, since title IV—the usual place for this provision—now contains the test proposal adopted by the Senate yesterday, and no longer contains the provision I am seeking to amend.

I would hope that the chairman of the Finance Committee, Mr. Long, will be able to accept this amendment as being a necessary provision to prevent excessive

assistance payments in some cases, and allow—in cases where there is an aged, blind, or disabled recipient in the household—the resources of that individual to be exempted in the computation of AFDC benefits.

The Presiding Officer. The Chair must interrupt the Senator, due to the fact that the Senator's amendment is not in order.

Mr. Cranston. For what reason?

The Presiding Officer. It is a part of the bill which has been locked in and is no longer open to amendment.

Mr. Long. Mr. President, I ask unanimous consent that the amendment might be considered. I ask unanimous consent that it be modified to add it at the end of the bill.

Mr. Cranston. I so modify it.

The Presiding Officer. It is modified accordingly; and, accordingly the amendment is permissible and no longer is out of order.

Mr. Cranston. Mr. President, I have explained the amendment. It is in the chairman's hands.

Mr. Long. Mr. President, I have some doubts about this amendment; but in view of the lateness of the hour, and rather than have long debate, I would be willing to take it to conference.

Mr. Cranston. I thank the Senator.

The Presiding Officer. The question is on agreeing to the amendment.

The amendment was agreed to." (118 Congressional Record-Senate, Oct. 5, 1972, p. 33973.)

Thus, the Cranston amendment aimed at prohibiting double counting sought to accomplish that which both the House of Reprensentatives and the Senate had intended to achieve.

The Cranston amendment appears as section 414 of Public Law 92-603 but has been tacked onto the very end of that law just where Senator Long caused it to be placed in the Senate version of the bill.

The Conference Report No. 92-1605 does not treat with the Cranston amendment. It was accepted by the House without any resistance.* The Cranston amendment carried, mistakenly, we believe, an effective date of January 1, 1973 as does Public Law 92-603 § 414. The legislative history shows that the effective date of the amendment should have been January 1, 1974, the date on which the Supplemental Security Income Program established by the *amended* Title XVI was to become effective.

The Committee on Finance of the Senate, in considering the Social Security Amendments of 1973 (H.R. 3153), as to "Supplemental Security Income Recipients Who Live With AFDC Families" stated (Senate Report No. 93-553 to accompany H.R. 3153) (pp. 25, 26):

> "Supplemental Security Income Recipients Who Live With AFDC Families
>
> (Sec. 124 of the bill)
>
> "In P.L. 93-66, the Congress enacted a grandfather clause providing that SSI recipients who are now getting

* In the House of Representatives, Section 414 was not included in H.R. 1 as finally passed. The enrollment of H.R. 1 was, however, apparently corrected immediately by H. Con. Res. 724 pursuant to which Section 414 and other omitted provisions were inserted by the House. (118 Congressional Record, House, October 17, 1972, pp. 36937, 36938.)

aid to the aged, blind, and disabled under State programs will receive State supplemental benefits sufficient to assure them no reduction in total income when the new SSI program goes into effect in January. The provision was designed to achieve this objective while, at the same time, minimizing the administrative burdens to be placed on the Department of HEW which would have to administer the SSI benefits and, at least in most States, the supplemental benefits.

"In most cases, the formula contained in P.L. 93-66 will achieve these two objectives in an acceptable way. However, in certain exceptional circumstances, an anomaly may arise in which the result of the provision in P.L. 93-66 will be to greatly increase the amount of assistance payable. This can happen in the case of individuals who are getting payments under the program of aid to the aged, blind or disabled, but who are also members of family units getting AFDC payments. In such cases there are two problems which can arise.

"The first of these relates to the allocation of certain budget items such as shelter and utilities which are common to both the aged, blind and disabled individual and the rest of his family. Under *the old law* some or all of these items might have been attributed to the aged, blind, or disabled person, while under *the new law,* the amount of payment to the aged, blind and disabled is determined without reference to specific budget needs. Thus the full amount of these specific needs will apparently have to be added to the AFDC budget, raising the amount of the AFDC grant. This effect could be partially offset if the SSI recipient's contributions toward the cost of running the household could be considered to

POOR COPY

reduce the net amount of the family's needs. *However, a provision of P.L. 92-603 (sec. 414) specifically prohibits counting the income and resources of an SSI recipient in determining the income and resources of an AFDC family.**

"A second part of the problem arises because some States allocate the income of an aged, blind, and disabled person to his entire family when doing so results in a higher total grant to the individual and his family. *This will no longer be permitted after January 1974,* but at the same time his total income (including that part now allocated to the rest of his family) must be counted in determining the mandatory State supplement under the grandfather clause in P.L. 93-66. The net result of this is that the State will have to provide an increased amount of assistance to his family (because the State can no longer count some of his income as the family's income) and will have to also provide an increased level of assistance to him (because it must count all of his income in computing the grandfather clause).

"The committee bill corrects this situation by permitting a State to adjust the grandfather clause in such a way

---

* A "Summary of Social Security Amendments of 1972, Public Law 92-603 (H.R. 1)" indicates that it is a "Joint Publication, Committee on Finance of the U.S. Senate and Committee on Ways and Means of the U.S. House of Representatives". It is dated November 17, 1972. The "Summary" was apparently prepared by the staffs of the Committees and takes a *literal* reading of section 414 of Public Law 92-603. It states (p. 26):

> "An individual receiving supplemental security income will not be considered a member of a family receiving aid under a plan approved under title IV, nor will his income or resources be considered available to such a family (also applicable to title XVI of current law, effective January 1, 1973)."

Legislative history does not support the literal reading given the statutes by those who prepared the "Summary".

that it would assure the maintenance of the same level of total family income (rather than the maintenance of the *individual's* total income) in those cases in which the SSI recipient resides with an AFDC family. The bill provides, however, that the SSI recipient would be assured under the grandfather clause at least as great a total income as a comparable aged, blind or disabled person not living with an AFDC family and having no other income." (Emphasis supplied.)

The Senate proposal was contained in H.R. 11333 as passed on December 31, 1973 (Public Law 93-233).

Here the Senate is talking about the "old law" and the "new law." It is differentiating the provisions of section 414 of Public Law 92-603 which the Finance Committee states "specifically prohibits counting the income and resources of an SSI recipient in determining the income and resources of an AFDC family". Furthermore, the Finance Committee speaks in terms of what it deems to be permissible before and after *January 1, 1974.*

We submit that the views of the Committee on Finance of the Senate as set out above make it clear that section 402(a)(24) was intended to apply subsequent to January 1, 1974 and to have no application at all prior to that date.

LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
APR 26 1976
MICHAEL RODAK, JR., CLERK

(G-53)

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1351

STEPHEN BERGER, as Commissioner of the Department of Social Services of the State of New York,
Petitioner,

vs.

SUSAN BARTON, on her own behalf and on behalf of CLINT YOUNG, her minor ward,
Respondents,

and

JOHN FAHEY, as Commissioner of Social Services of the County of Albany,
Respondent.

REPLY BRIEF ON BEHALF OF PETITIONER

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Petitioner
The Capitol
Albany, New York 12224
Telephone: (518) 474-7178

JEAN M. COON
Assistant Solicitor General

ALAN W. RUBENSTEIN
Principal Attorney
of Counsel

BATAVIA TIMES, APPELLATE COURT PRINTERS
A. GERALD KLEPS, REPRESENTATIVE
20 CENTER ST., BATAVIA, N. Y. 14020
716-343-0457

INDEX.

	Page
Reply Brief on Behalf of Petitioner	1
I.	1
II.	2
III.	3
Conclusion. The Petition for a Writ of Certiorari Should Be Granted	3
Exhibit A. March 13, 1973 Memorandum of the Deputy Commissioner for Income Maintenance	4

IN THE

Supreme Court of the United States

October Term, 1975

No. 75-1351

STEPHEN BERGER, as Commissioner of the Department of Social Services, of the State of New York,

Petitioner,

vs.

SUSAN BARTON, on her own behalf and on behalf of CLINT YOUNG, her minor ward,

Respondents,

and

JOHN FAHEY, as Commissioner of Social Services of the County of Albany,

Respondent.

REPLY BRIEF ON BEHALF OF PETITIONER

This brief is submitted on behalf of the petitioner State Commissioner of Social Services in reply to the brief of respondents Barton and Young.

I

The March, 1973 memorandum of the Deputy Commissioner for Income Maintenance (Respt. Br., p. 3) has not been set out *in toto.* We attach it hereto as Exhibit "A". That memorandum related to the erroneous effective date of section 402(a) (24) of the Social Security Act and is entirely supportive of petitioner's position.

POOR COPY

II

The Departmental Administrative letter of January 7, 1976 (No. 76 ADM-3) (Respt. Br., p. 3, footnote) stated:

> "II. *Program Implications*
>
> The Social and Rehabilitation Service of the U.S. Department of Health, Education and Welfare recently clarified its requirements for the budgeting of ADC/AABD cooperative cases in December, 1973. This clarification is intended to insure that in converted SSI cases, the income of an AABD recipient was not taken into account in determining eligibility and degree of need in an ADC case which was cooperative with AABD in December, 1973. Therefore, it may be necessary to recompute the December 1973 grant, effective 1/1/74, for purposes of AABD cooperative cases in which income was pro-rated."

We are advised by the State Department of Social Services that the purpose of the Administrative Letter is to clarify what should be done, effective January 1, 1974, for cases which were converted from Aid to the Aged, Blind and Disabled (AABD), to Supplemental Security Income (SSI). The Administrative Letter does not authorize the recomputation of the December, 1973 AABD or AFDC grants for the purpose of altering grant payments for that month. Grant payments for December, 1973 remain unchanged. All that the Administrative Letter does is to instruct the local social services districts that for the purposes of correctly implementing the conversion from AABD to SSI on January 1, 1974, certain changes must be made on the basis of what had been paid in December, 1973. This is made clear by the last sentence above quoted that it may be necessary to recompute the December, 1973 grant effective January 1, 1974.

The Administrative Letter in no way constitutes a withdrawal from petitioner's position that the January 1, 1973 effective date of section 402(a) (24) was erroneous.

III

We cannot speculate, as respondents do, as to the potential exposure that New York and its local social services districts may or may not have because New York pursued its policy of cooperative budgeting during calendar year 1973. We urge that it is better to settle the merits of the controversy now.

CONCLUSION

The Petition for a Writ of Certiorari Should Be Granted.

Dated: April 21, 1976.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Petitioner

JEAN M. COON
Assistant Solicitor General

ALAN W. RUBENSTEIN
Principal Attorney
of Counsel

EXHIBIT A

March 13, 1973 Memorandum of the Deputy Commissioner for Income Maintenance

State of New York Department of Social Services

MEMORANDUM
Form D65-524 (Rev. 11/38)
Formerly BOA-100

TO: Felix Infausto DATE: March 13, 1973

FROM: Gabriel T. Russo SUBJECT:

On March 1, 1973, I discussed with you correspondence received from Commissioner Reed of Monroe County in relationship to implementation of Section 414 of Public Law 92-603, otherwise known as HR-1.

This Section would provide that an individual receiving benefits under Title 16 for AABD would not be regarded as a member of a family for purposes of determining eligibility for that family for public assistance and the AABD recipients income and resources would not be counted as income and resources of a family under the Title.

The amendment was to take place effective January 1, 1973.

I have been advised repeatedly by Social Security Administration that this amendment was an error and that a bill has been drafted and submitted to correct this date. On March 12, 1973, I was advised by Social Security Administration that a bill has not yet been drafted to amend this Section.

At the present time there are several adjustment bills in draft form and will be presented to Congress to adjust and amend HR-1 but as yet this has not taken place.

Social Security did offer that if New York State is served with a law suit in this matter that is to enforce this Section effective January 1, 1973, they would be willing to testify on our behalf as to the intent of this Section namely that it was not to take effect until January 1, 1974.